

DECISION

Metcalf
24413

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-209101

DATE: March 7, 1983

MATTER OF: Robert R. Ormiston

DIGEST:

Agriculture Department employee who transferred to a new duty station in Puerto Rico, and reported for duty on February 18, 1980, may not be reimbursed for real estate expenses of sale of his former residence since settlement did not occur until June 1982, more than 2 years after date of reporting. The time limitation imposed by para. 2-6.1e of FTR may not be waived or modified even though the employee's difficulty in selling former residence was due to housing market conditions.

An authorized certifying officer of the Department of Agriculture requests our decision as to whether an employee may be reimbursed real estate expenses incident to a permanent change of station where the sale of his residence was delayed approximately 4 months beyond the authorized time limit. Payment is not authorized since the applicable regulations restricting the period of settlement necessary for reimbursement have the force and effect of law and cannot be waived.

Dr. Robert R. Ormiston, an employee of the Department of Agriculture, was transferred February 10, 1980, from Carmel, Indiana, to San Juan, Puerto Rico. He arrived in San Juan on February 18, 1980. In November 1980, he requested and was granted a 1-year extension of initial 1-year settlement date limitation for reimbursement of real estate expenses. At the time the extension was granted, he was informed that the 1-year extension was the maximum time authorized. He began his attempts to sell his former residence beginning in April 1981 as his family did not plan to relocate until July 1981. The house remained vacant until it was sold in June 1982. Dr. Ormiston states in essence that although he was very anxious to get an immediate sale and meet the time limitation, the delay in doing so was due to the severely depressed economy and housing market in the Carmel area.

024770

The reimbursement of Federal employees for certain expenses incurred in connection with residence transactions incident to a transfer of duty station is governed by 5 U.S.C. 5724a (1976) and regulations issued pursuant thereto. At the time of Dr. Ormiston's transfer, the applicable regulations governing the time limitation on the sale of a residence were contained in paragraph 2-6.1e of the Federal Travel Regulations (FTR) (FPMR 101-7), which provides as follows:

"e. Time limitation. The settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 (initial) year after the date on which the employee reported for duty at the new official station. Upon an employee's written request this time limit for completion of the sale and purchase or lease termination transaction may be extended by the head of the agency or his/her designee for an additional period of time, not to exceed 1 year, regardless of the reasons therefor so long as it is determined that the particular residence transaction is reasonably related to the transfer of official station."

As the above regulation makes clear, the additional period of time after the initial 1-year period may not be extended beyond 1 year. 58 Comp. Gen. 539 (1979). In the present case, this period expired before Dr. Ormiston sold his former residence. While we do not question the contention that he was unable to sell his residence as a result of conditions that were essentially beyond his control, the provisions of the Federal Travel Regulations issued pursuant to 5 U.S.C. 5724a (1976), have the force and effect of law, and may not be waived or modified by this Office or any agency concerned even though an employee's inability to sell his residence may be due to difficulties in the housing market, by financing constraints, or other factors. Matter of Ballentine, B-193607, March 8, 1979; Matter of Johnson, B-202402, November 5, 1981, and Matter of Moore, B-207730, July 7, 1982.

B-209101

Although we are aware that paragraph 2-6.1e of the regulations was revised on August 23, 1982, providing for an additional period of time for those employees whose entitlement had not expired, Dr. Ormiston's time limitation had expired prior to their issuance and thus are inapplicable to his case.

Accordingly, Dr. Ormiston is not entitled to reimbursement of these expenses.

for *Milton J. Fowler*
Comptroller General
of the United States